

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 247

(By Senators Tomblin, Mr. President, and Sprouse,

By Request of the Executive)

[Passed January 23, 2006; in effect from passage.]

AN ACT to repeal §22A-2-69 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §15-5B-1, §15-5B-2, §15-5B-3, §15-5B-4 and §15-5B- 5 ; to amend and reenact §22A-2-55 and §22A-2-66 of said code; and to amend said code by adding thereto a new section, designated §24-6-14, all relating to mine and industrial emergencies; creating the Mine and Industrial Accident Rapid Response System; providing requirements for protective equipment in underground mines; providing for criminal penalties for the unauthorized removal of or tampering with certain protective equipment; defining certain terms; providing for notification requirements in the event of an accident in or about any mine and imposing a civil administrative penalty for the failure to comply with such notification requirements; providing rule-making authority; and clarifying the responsibilities of county answering points.

Be it enacted by the Legislature of West Virginia:

That §22A-2-69 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new article, designated §15-5B-1, §15-5B-2, §15-5B-3, §15-5B-4 and §15- 5B-5 ; that §22A-2-55 and §22A-2-66 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §24-6-14, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 5B. MINE AND INDUSTRIAL ACCIDENT RAPID RESPONSE SYSTEM.

§15-5B-1. Legislative purpose; Mine and Industrial Accident Rapid Response System created.

(a) The Legislature finds that the health and safety of persons working in and around the mining industry and other industries is of paramount concern to the people of West Virginia and that deaths and serious injuries resulting from dangerous working conditions cause grief and suffering to workers and their families. The Legislature further finds that there is an urgent need to provide more effective means and measures for improving emergency response and communications for dealing with mine and industrial accidents. The Legislature declares that it is in the best interest of the citizens of West Virginia to designate an emergency telephone number for mining or industrial personnel to initiate a rapid emergency response to any mine or industrial accident. Provision of a single, primary emergency number through which emergency services can be quickly and efficiently obtained and through which the response of various state agencies charged by law with responding to mine and industrial emergencies can be coordinated will significantly contribute to the public good. The Mine and Industrial Accident Rapid Response System will provide a vital resource to the citizens of West Virginia by providing a critical connection between the Director of the Office of Miners' Health, Safety and Training, the Division of Homeland Security and Emergency Management, local and regional emergency services organizations and other responsible agencies.

(b) The Mine and Industrial Accident Rapid Response System is hereby created and shall consist of:

(1) The Mine and Industrial Accident Emergency Operations Center established in section two of this article; and

(2) The 24-hour-a-day statewide telephone number established by the Director of the Division of Homeland Security and Emergency Management.

§15-5B-2. Mine and industrial accident emergency operations center.

(a) The Director of the Division of Homeland Security and Emergency Management, working in conjunction with the Office of Miners' Health, Safety and Training, shall maintain the Mine and Industrial Accident Emergency Operations Center, which shall be the official and primary state government 24-hour-a-day communications center for dealing with mine and industrial accidents.

(b) The emergency operations center shall be operated twenty- four hours a day, seven days a week by emergency service personnel employed by the director to provide emergency assistance and coordination to mine and industrial accidents or emergencies.

(c) The emergency operations center shall be readily accessible twenty-four hours a day at a statewide telephone number established and designated by the director.

§15-5B-3. Emergency mine response.

(a) To assist the Division of Homeland Security and Emergency Management in implementing and operating the Mine and Industrial Accident Rapid Response System, the Office of Miners' Health, Safety and Training shall, on a quarterly basis, provide the emergency operations center with a mine emergency contact list. In the event of any change in the information contained in the mine emergency contact list, such changes shall be provided immediately to the emergency operations center. The mine emergency

contact list shall include the following information:

- (1) The names and telephone numbers of the Director of the Office of Miners' Health, Safety and Training, or his or her designee, including at least one telephone number at which the Director or designee may be reached at any time;
 - (2) The names and telephone numbers of all district mine inspectors, including at least one telephone number for each inspector at which each inspector may be reached at any time;
 - (3) A current listing of all regional offices or districts of the Office of Miners' Health, Safety and Training, including a detailed description of the geographical areas served by each regional office or district; and
 - (4) The names, locations and telephone numbers of all mine rescue stations, including at least one telephone number for each station that may be called twenty-four hours a day and a listing of all mines that each mine rescue station serves in accordance with the provisions of section thirty-five, article one, chapter twenty-two-a of this code.
- (b) Upon the receipt of an emergency call regarding any accident, as defined in section sixty-six, article two, chapter twenty-two-a of this code, in or about any mine, the emergency operations center shall immediately notify:
- (1) The Director of the Office of Miners' Health, Safety and Training or his or her designee;
 - (2) The district mine inspector assigned to the district or region in which the accident occurred; and
 - (3) Local emergency service personnel in the area in which the accident occurred.
- (c) The director or his or her designee shall determine the necessity for and contact all mine rescue stations that provide rescue coverage to the mine in question.
- (d) In the event that an emergency call regarding any accident, as defined in section sixty-six, article two, chapter twenty-two-a of this code, in or about any mine, is initially received by a county answering point, as defined in article six, chapter twenty-four of this code, the call shall be immediately forwarded to the Mine and Industrial Accident Emergency Operations Center.
- (e) Nothing in this section shall be construed to relieve an operator, as defined in section two, article one, chapter twenty-two-a of this code, from any reporting or notification obligation under federal law.
- (f) The Mine and Industrial Accident Rapid Response System and the emergency operations center are designed and intended to provide communications assistance to emergency responders and other responsible persons. Nothing in this section shall be construed to conflict with the responsibility and authority of an operator to provide mine rescue coverage in accordance with the provisions of section thirty-five, article one, chapter twenty-two-a of this code or the authority of the Director of the Office of Miners' Health, Safety and Training to assign mine rescue teams under the provisions of subsection (d) of said section or to exercise any other authority provided in chapter twenty-two-a of this code.

§15-5B-4. Study of other industrial emergencies.

The Director of the Division of Homeland Security and Emergency Management shall immediately cause a study to be conducted to determine the feasibility of providing

emergency coverage to other industrial, manufacturing, chemical or other emergencies through the Mine and Industrial Accident Rapid Response System. On or before the first day of November, two thousand six, the director shall submit a report to the Governor, the President of the Senate and the Speaker of the House of Delegates setting forth the findings of his or her study and recommendations for legislation consistent with the purposes of this article.

§15-5B-5. Rule-making authority.

The Director of the Division of Homeland Security and Emergency Management shall propose emergency and legislative rules for promulgation in accordance with article three, chapter twenty- nine-a of this code regarding the implementation and administration of the Mine and Industrial Accident Rapid Response System. The requirements of this article enacted during the regular session of the Legislature in January, two thousand six, shall not be implemented until the emergency rule authorized herein has been approved.

CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-55. Protective equipment and clothing. (a) Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles or other eye hazards.

(b) Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing. (c) Protective gloves shall be worn when material which may injure hands is handled, but gloves with gauntleted cuffs shall not be worn around moving equipment. (d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a mine: *Provided*, That metatarsal guards are not required to be worn by persons when working in those areas of underground mine workings which average less than forty-eight inches in height as measured from the floor to the roof of the underground mine workings. (e) Approved eye protection shall be worn by all persons while being transported in open-type man trips. (f)(1) A self-contained self-rescue device approved by the Director shall be worn by each person underground or kept within his immediate reach and the device shall be provided by the operator. The self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. Each operator shall train each miner in the use of such device and refresher training courses for all underground employees shall be held during each calendar year.

(2) In addition to the requirements of subdivision (1) of this subsection, the operator shall also provide caches of additional self-contained self-rescue devices throughout the mine in accordance with a plan approved by the director. Each additional self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. The total number of additional self- contained self-rescue devices, the total number of storage caches and the placement of each cache throughout the mine shall be established by rule

pursuant to subsection (i) of this section. Intrinsically safe battery-powered strobe lights shall be affixed to each cache and shall be capable of automatic activation in the event of an emergency. A luminescent sign with the words "SELF- CONTAINED SELF-RESCUER" or "SELF-CONTAINED SELF-RESCUERS" shall be conspicuously posted at each cache and luminescent direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with reflective material at 25-foot intervals, shall be attached to each cache from the last open crosscut to the surface. The operator shall conduct weekly inspections of each cache, the affixed strobe lights and each lifeline cord or other similar device to ensure operability.

(3) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any self- contained self-rescue device or battery-powered strobe light from the mine or mine site with the intent to permanently deprive the operator of the device or light or knowingly tampers with or attempts to tamper with such device or light shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

(g)(1) A wireless emergency communication device approved by the director and provided by the operator shall be worn by each person underground. The wireless emergency communication device shall, at a minimum, be capable of receiving emergency communications from the surface at any location throughout the mine. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine any and all equipment necessary to transmit emergency communications from the surface to each wireless emergency communication device at any location throughout the mine.

(2) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless emergency communication device or related equipment, from the mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

(h)(1) A wireless tracking device approved by the director and provided by the operator shall be worn by each person underground. In the event of an accident or other emergency, the tracking device shall, at a minimum, be capable of providing real-time monitoring of the physical location of each person underground: *Provided*, That no person shall discharge or discriminate against any miner based on information gathered by a wireless tracking device during nonemergency monitoring. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine all equipment necessary to provide real-time emergency monitoring of the physical location of each person underground.

(2) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless tracking device or related equipment,

approved by the director, from a mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

(i) The director may promulgate emergency and legislative rules to implement and enforce this section pursuant to the provisions of article three, chapter twenty-nine-a of this code. (j) The penalties set forth in this article enacted during the regular session of the Legislature in January, two thousand six, shall become effective the first day of July, two thousand six.

§22A-2-66. Accident; notice; investigation by Office of Miners' Health, Safety and Training.

(a) For the purposes of this section, the term "accident" means:

(1) The death of an individual at a mine; (2) An injury to an individual at a mine which has a reasonable potential to cause death; (3) The entrapment of an individual; (4) The unplanned inundation of a mine by a liquid or gas; (5) The unplanned ignition or explosion of gas or dust; (6) The unplanned ignition or explosion of a blasting agent or an explosive; (7) An unplanned fire in or about a mine not extinguished within five minutes of ignition; (8) An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage; (9) A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour; (10) An unstable condition at an impoundment, refuse pile or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area, or the failure of an impoundment, refuse pile or culm bank; (11) Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty minutes; and (12) An event at a mine which causes death or bodily injury to an individual not at the mine at the time the event occurs.

(b) Whenever any accident occurs in or about any coal mine or the machinery connected therewith, it is the duty of the operator or the mine foreman in charge of the mine to give notice, within fifteen minutes of ascertaining the occurrence of an accident, to the Mine and Industrial Accident Emergency Operations Center at the statewide telephone number established by the Director of the Division of Homeland Security and Emergency Management pursuant to the provisions of article five-b, chapter fifteen of this code stating the particulars of the accident: *Provided*, That the operator or the mine foreman in charge of the mine may comply with this notice requirement by immediately providing notice to the appropriate local organization for emergency services as defined in section eight, article five of said chapter, or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code: *Provided, however*, That nothing in this subsection shall be construed to relieve the operator from any reporting or notification requirement under federal law.

(c) The Director of the Office of Miners' Health, Safety and Training shall impose, pursuant to rules authorized in this section, a civil administrative penalty of one hundred

thousand dollars on the operator if it is determined that the operator or the mine foremen in charge of the mine failed to give immediate notice as required in this section:

Provided, That the director may waive imposition of the civil administrative penalty at any time if he or she finds that the failure to give immediate notice was caused by circumstances wholly outside the control of the operator.

(d) If anyone is killed, the inspector shall immediately go to the scene of the accident and make recommendations and render assistance as he or she may deem necessary for the future safety of the men and investigate the cause of the explosion or accident and make a record. He or she shall preserve the record with the other records in his or her office. The cost of the investigation records shall be paid by the Office of Miners' Health, Safety and Training. A copy shall be furnished to the operator and other interested parties. To enable him or her to make an investigation, he or she has the power to compel the attendance of witnesses and to administer oaths or affirmations. The director has the right to appear and testify and to offer any testimony that may be relevant to the questions and to cross-examine witnesses.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-14. Notification of mining accidents.

Each county answering point that receives a call reporting an accident in or about any mine shall immediately route the call to the Mine and Industrial Accident Emergency Operations Center created pursuant to section two, article five-a, chapter fifteen of this code.